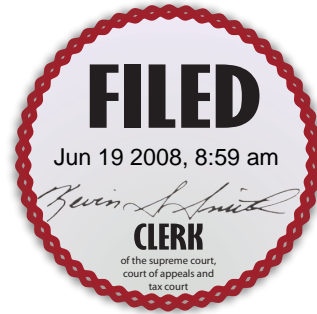


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

AMY KAROZOS
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

TAMMI FORSTER
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF:)
S.R., CHILD IN NEED OF SERVICES,)
)
TAMELA R., MOTHER,)
)
Appellant-Respondent,)
)
vs.)
)
MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner,)
)
and)
)
CHILD ADVOCATES, INC.,)
)
Co-Appellee (Guardian Ad Litem).)

No. 49A02-0712-JV-1088

APPEAL FROM THE MARION SUPERIOR COURT – JUVENILE DIVISION
The Honorable Marilyn Moores, Judge
The Honorable Beth Jansen, Magistrate
Cause No. 49D09-0704-JT-013343

June 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Tamela R. (“Mother”) appeals from the juvenile court’s determination that her minor child, S.R., is a Child in Need of Services (“CHINS”). Specifically, she claims that the evidence is insufficient to support the CHINS determination. Concluding that the evidence is sufficient to support the CHINS determination, we affirm the judgment of the trial court.

Facts and Procedural History

Mother was born in 1989 and lived with an aunt, Ada Steele, in Alabama between the ages of eight and thirteen or fourteen. Mother then moved to Indianapolis, Indiana, to live with a great aunt, Hattie Robinson, who became her legal guardian. After Mother ran away from Robinson’s home and was later found hiding in the home of Steele, who had moved to Indiana, she was determined to be a CHINS. She was placed outside of Robinson’s home between the summer of 2005 and February 2006. She was also ordered to have no contact with Steele and Steele’s children.¹ Around the time she was placed back in Robinson’s home, Mother became pregnant.

On November 27, 2006, at the age of seventeen, Mother gave birth to S.R.² By that time, Mother lived in a group maternity home and participated in services there.

¹ Prior to the second evidentiary hearing in this matter, the trial court lifted the no-contact order between Mother and Steele and her children. Tr. p. 134-35. However, the no-contact order was in effect throughout the events described in this opinion.

² Antonio S. is the alleged father of S.R., but he is not a party to this appeal.

Mother attended school regularly and complied with the group home's requirements. After the group home closed in March 2007, Mother and S.R. were placed in an apartment through a program called Scattered Sites, which also provided Mother with a case manager. She also received parenting services through a program called Healthy Families and had a home-based counselor.

Despite these services, Mother's attendance in school became infrequent and finally ceased. Tr. p. 18. She informed Kelly Silver, her case manager in her own CHINS case, that she was spending time with her boyfriend, Victor Grady, instead of attending school. *Id.* at 19. Mother told Silver that Grady sold drugs and punched walls when he became angry, which scared her, although she claimed that he did not physically abuse her or sell drugs in her or S.R.'s presence. *Id.* Mother also reported to Silver that she and S.R. were spending time in Steele's home, despite the no-contact order in place. *Id.*

On March 24, 2007, Silver went to Mother's apartment building and observed a number of teenagers in the hallway and the scent of marijuana smoke. She therefore called police to accompany her, and a responding police officer broke up a party in Mother's apartment and found marijuana in Mother's room. While inside the apartment, Silver noted that it was "in disarray" and that S.R.'s crib was full of "junk" such that the baby could not have slept in it. *Id.* at 27. Mother was arrested for possession of marijuana. S.R. was not present in Mother's apartment during the party. Instead, Steele's daughter was babysitting her, in spite of the no-contact order.

Shortly after the party and Mother's arrest for drug possession, the Marion County Department of Child Services ("MCDCS") filed a petition for permission to seek a CHINS determination in regard to S.R. The trial court authorized the filing, and the MCDCS filed a petition asking the court to declare S.R. a CHINS. After an initial hearing on the CHINS petition, Mother and S.R. were placed together in a therapeutic foster care home. While living in this foster home, Mother did not attend school and sometimes stayed out all night with S.R. without contacting her foster mother. *Id.* at 30. This led to two "runaway reports." *Id.* at 31. Additionally, Mother continued to spend time with Grady. *Id.* On May 10, 2007, the MCDCS removed S.R. from Mother's care because Mother continued to "stay out all night with [S.R.]," was not "complying with school," and had not complied with Silver's instruction that she take S.R. to a doctor for treatment of raspy breathing, persistent diaper rash, and a possible ear infection. *Id.* at 32-33. At the time of S.R.'s removal, Mother was asked to pack necessary items for her. However, Mother packed only one bottle of sour formula, clothing that was too large for S.R., and a few diapers. *Id.* at 33.

S.R. was immediately placed with a foster mother, Cynthia Armstrong-Truitt. Armstrong-Truitt noticed that when S.R. came to live with her, S.R. suffered from "[s]evere diaper rash," *id.* at 149, thrush, and "her neck was so raw that it was bleeding," *id.* at 150. She described the appearance of S.R.'s neck as follows:

It, it was raw from, probably slobber, cutting teeth. Things, throwing up. Things . . . Bottles leaking. It was kind of . . . For lack of a better word, you know like when people sweat sometimes and they get like that kind of dry yucky stuff, that was there too. Like it just wasn't clean. But it, and, it had been left that it was raw and bleeding.

Id.

After fact-finding hearings on June 14, 2007, and July 19, 2007, the trial court issued Findings of Facts and Conclusions of Law finding S.R. to be a CHINS.³ Noting, among other things, Mother's relationship with Grady, her arrest for possession of marijuana, her failure to seek medical treatment for S.R., her insistence upon spending time with individuals subject to a no-contact order, her failure to attend high school or work toward her GED, her lack of employment or an employment history, and her resistance to services, the trial court concluded that the MCDCS proved the elements required for a CHINS adjudication under Indiana Code § 31-34-1-1. Appellant's App. p. 71-77. Mother now appeals.

Discussion and Decision

Mother raises one issue on appeal: whether the evidence is sufficient to support the trial court's determination that S.R. is a CHINS. The MCDCS has the burden of proving by a preponderance of the evidence that a child is a CHINS. *See* Ind. Code § 31-34-12-3; *In re M.W.*, 869 N.E.2d 1267, 1270 (Ind. Ct. App. 2007). When determining whether sufficient evidence exists in support of a CHINS determination, we consider only the evidence favorable to the judgment and the reasonable inferences raised by that evidence. *Id.* This Court will not reweigh the evidence or judge witnesses' credibility. *Id.* Here, the trial court made specific findings and conclusions of law in its order adjudicating S.R. to be a CHINS. Appellant's App. p. 71-77. Where a trial court enters specific findings and conclusions thereon, we apply a two-tiered standard of review.

³ Magistrate Beth Jansen signed the Findings of Facts and Conclusions of Law, Appellant's App. p. 77, and Judge Marilyn Moores approved the ruling on October 19, 2007, *id.* at 6.

Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005).

First, we determine whether the evidence supports the findings, and, second, we examine whether the findings support the judgment. *Id.* We will set aside the trial court's judgment only if it is clearly erroneous. *Id.*

The juvenile court found that S.R. was a CHINS pursuant to Indiana Code § 31-34-1-1, which provides as follows:

A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

(2) the child needs care, treatment or rehabilitation that the child:

(A) is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

The CHINS statute, however, does not require that a court wait until a tragedy occurs to intervene. *Roark v. Roark*, 551 N.E.2d 865, 872 (Ind. Ct. App. 1990). Rather, a child is a CHINS when he or she is endangered by parental action or inaction. *Id.* The purpose of a CHINS adjudication is not to punish the parents, but to protect the children. *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), *trans. denied*.

Mother maintains that the MCDSCS failed to prove by a preponderance of the evidence three elements required by Indiana Code § 31-34-1-1, namely that she failed to supply S.R. with necessary food, clothing, shelter, medical care, education, or supervision, that S.R.'s physical or mental health was seriously endangered, and that S.R.

is in need of care or treatment that will not be provided without the coercive intervention of the court. Appellant's Br. p. i. We disagree.

First, the evidence supports the trial court's conclusion that Mother is "unable or unwilling to appropriately care for and provide for [S.R.]" Appellant's App. p. 75. The record reflects that Mother was unemployed during the CHINS proceedings, with no employment history, and did not have a plan for caring for S.R.'s needs financially. Tr. p. 34. At the time of the CHINS evidentiary hearings, Mother herself lived in foster care. Mother was in therapeutic foster care because of her own actions: she had lost her independent housing after throwing a party and being arrested for possession of marijuana. *Id.* at 56. Although S.R. was with a babysitter at the time of the party and Mother's arrest, Mother had left her in the care of a person against whom there was, at that time, a no-contact order in place. *Id.* at 28-29. Before the evidentiary hearings in these CHINS proceedings, S.R. was removed from Mother's custody because of Mother's unwillingness to comply with the expectations of the therapeutic foster home. Specifically, Mother was staying out all night with S.R. Mother had also failed to seek medical care for S.R. despite being instructed to do so by Silver, her case manager, because of S.R.'s raspy breathing, possible ear infection, and persistent diaper rash. *Id.* at 32-33. Additionally, Mother had stopped attending school and was instead spending time with her boyfriend, Grady, an alleged drug dealer. Mother admitted to Silver that Grady dealt drugs but claimed that he did not do so around her and S.R., although she took S.R. with her when she visited Grady. She also told Silver that Grady punched walls when he became angry, which scared her. *Id.* at 19. While Mother testified that at the time of the

evidentiary hearings she was no longer dating Grady, she admitted that she had dated him and allowed him to be around S.R. even though he had scared her because of his “anger problem.” *See id.* at 139. The trial court made factual findings in line with this evidence and reached the conclusion that Mother is unable or unwilling to appropriately care and provide for S.R. Appellant’s App. p. 75. This conclusion is adequately supported by the evidence.

Next, the evidence supports the trial court’s conclusion that Mother’s inability or unwillingness to adequately care for S.R. has “seriously impaired or endangered” her. *Id.* at 76. Specifically, as of the dates of the evidentiary hearings in this matter, Mother was unemployed, not attending high school, had lost the independent housing she shared with S.R. after being charged with possession of marijuana, and had no plan for caring for S.R.’s needs financially. Tr. p. 34. Moreover, Mother failed to seek medical treatment for S.R. when S.R. suffered from thrush, severe diaper rash, a possible ear infection, and irritated skin that caused the infant’s neck to bleed and appear raw. *Id.* at 33, 150. In accordance with this evidence, the trial court made factual findings that Mother failed to get timely medical treatment for S.R., that Mother has no means of supporting herself or S.R., and that Mother lacks a plan for providing food, shelter, clothing, and medical care for S.R. Appellant’s App. p. 73. These findings are supported by the evidence, and they support the trial court’s conclusion that Mother has seriously impaired or endangered S.R.’s physical condition. *Id.* at 76.

Finally, the evidence is sufficient to show that S.R. is in need of care or treatment that would not be provided without the coercive intervention of the court. Contrary to

Mother's assertion on appeal that "[t]here are no facts listed by the trial court that support the conclusion that [Mother] denied she or [S.R.] needed assistance," Appellant's Br. p. 18, the trial court found that "[p]rior to the filing of the CHINS Petition in this matter, [Mother] was not complying with services provided to her under her CHINS matter to assist her in caring for her child," Appellant's App. p. 72, that Mother had failed to seek medical treatment for S.R., *id.* at 73, and that the MCDCS had ongoing concerns regarding Mother's "unwillingness" to adequately care for S.R., *id.* at 75. These factual findings are supported by the evidence in the record of Mother's pattern of not following the rules set by her service providers and not following the advice of her case manager to seek medical treatment for S.R. When asked whether Mother "followed through on trying to reach those goals" set by a team working to help her achieve independence, Silver answered, "No." Tr. p. 56. Silver also testified to Mother's resistance to working with a service provider called Healthy Families and to Mother's indifference toward "taking responsibility for caring for and planning to care for [S.R.]." *Id.* at 35. The trial court's conclusion that the coercive intervention of the court is necessary to ensure that S.R. receives the care and treatment that she needs is supported by the evidence.

Much of Mother's argument on appeal involves emphasizing conflicting testimony presented at the evidentiary hearings. However, this is simply a request for us to reweigh the evidence, which we will not do. *In re J.W.*, 779 N.E.2d 954, 961 (Ind. Ct. 2002), *trans. denied*.

The trial court's conclusions that Mother failed to supply S.R. with necessary food, clothing, shelter, medical care, education, or supervision, that S.R.'s physical or

mental health was seriously endangered because of this, and that S.R. is in need of care or treatment that will not be provided without the coercive intervention of the court are not clearly erroneous. The evidence is sufficient to support the trial court's determination that S.R. is a CHINS.

Affirmed.

MAY, J., and MATHIAS, J., concur.